IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4970 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PRAHLAD MUKUNDRAY BHATT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4970 of 2001

MR PARESH UPADHYAY for Petitioner No. 1

MR PR ABICHANDANI, AGP for Respondent No. 1-2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 27/09/2001

ORAL JUDGEMENT

1. Heard ld. counsel Mr. Upadhyay for the petitioner at length. I have also heard ld. AGP Mr. Abichandani for the State. Ld. counsel Mr. Upadhyay for the petitioner has taken me through the averments

made in the petition and relevant documents produced in support thereof. He has mainly relied on the averments made in the affidavit-in-reply filed by the State of Guajrat. The say of the respondent State is that the petitioner was not promoted because he was under the cloud of departmental proceedings. To appreciate the contentions raised by both the sides, I would like to state facts leading to the present petition, in nutsheel.

2. That the petitioner is a Junior Engineer (Civil) serving in Narmada Water Resources & Water Supply Department of the State of Gujarat. Initially he was appointed as Junior Engineer (Civil) on 19.6.1978. After serving several yers, he was awaiting promotion to the immediate higher post of Deputy Executive Engineer (Civil). On 20.4.2001, the State Government issued orde of promotion whereby colleagues of the petitioner including juniors to the petitioner were promoted to the psot of Deputy Executive Engiener (Civil) and the petitioner was supersedsed. It is contended by the petitioner that there was no departmental proceedings either pending or contemplated against the petitioner on the day on which Departmental Promotion Committee (DPC for short) was met for considering the case of Junior Engineers for promotional post. Case of the petitioner was also considered by DPC and the petitioner was found fit. Affidavit-in-reply filed by the State of Gujarat also reveals that petitioner's case was considered andhe was found fit and was included in the select list. Select list was sent to GPSC and the said list was also approved by the GPSC. The petitioner is never communicated any adverse remarks in Annual Confidential Report and there was no reason for the respondents to supersede the petitioner while promoting his juniors.

3. I have considered the case of the petitioner. The affidavit filed by the State also reveals that even on the date of filing of affidavit i.e. 7.6.2001, no formal chargesheet was ready with the departemnt and it is said on oath that "chargesheet is under preparation". This stand of the government is not only surprising, but is shocking. Though the State has laid down policy for dealing with such cases vide Govt. Resolution dated 20.7.1993, the affidavit of resistance is filed. In my view, the stand taken by the State in the affidavit-in-reply , is not just, legal and proper. There is substance in the case of the petitioner. As there was no departmental proceedings either pending or contemplated on the date on which DPC met, the sealed cover procedure was not to be followed and, therefore, impugned action of the respondents is not just and proper

and that there was no reason to supersede the petitioner.

4. Ld. counsel Mr. Upadhyay has mainly relied on the set of facts available on record and has submitted that as the petitioner was never served with the chargesheet and departmental inquiry was not even contemplated on the day on which DPC met, there was no reason for the department for not promoting the petitioner along with other colleagues. Ld. counsel Mr. Upadhyay has taken me through number of decisions on settled legal position in this regard. By relying on the decision in the case of Union of India v/s K.V. Jankiraman, reported in AIR 1991 SC 2010, known as Janki Raman's case. He has submitted that in the cited case the delinquent was served with chargesheet and sealed cover procedure was followed, whereas in the present case, name of the petitioner was very well in the select list and said select list was also approved by the GPSC. As there was no departmental inquiry either contemplated or pending against the petitioner, sealed cover procedure was not required to be followed. So, ratio propounded in Janki Raman's case (supra) clearly applies to the facts of the preent case with more vehemence. Relying on the decision in the case of State of M.P. v/s Bani Singh & Anr. reported in AIR 1990 SC 1308, ld. counsel Mr. Upadhyay has pointed out that looking to the date of alleged wrong, non-initiation of Departmental Proceedings for several years and act of serving charge memo after 18 years, would give rise to a cause whereby the petitioner can pray for even dropping of charge. However, the prayer of the present petitioner is limited to the effect that his hampered right to be promoted to the higher post should be upheld and he should be given promotion accordingly with all consequential benefits. Ld. counsel Mr. Upadhyay has also relied on the decision in the case of Delhi Jal Board v/s Mahinder Singh, reported in JT 2000(10) SC 158, wherein the Apex Court has held as under:-

> "The right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyanace till the result of any pending disciplinary inquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. The mere fact that by the time the disciplinary proceedings in the first

inquiry ended in his favour and by the time the seal weas opened to give effect to it, another departmental inquiry was started by the department, would not come in the weay of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection."

5. In view of above accepted settled legal proposition of law, I am satisfied that the petitioner, illegally and in violation of Articles 14 & 16 of the Constitution of India, is denied the promotion to the higher post. On the letter of Vigilence Commission dated 29.3.2000 department had taken conscious decision to initiate departmental inquiry against the petitioner in November 2000 and it seems that till then the department itself was confused. Govt. Resolutin dated 20.9.1993 also takes care of the situation. I am surprised why the Government has taken negative stand in the matter and so the stand taken by the Government is apparently arbitrary and wrong. Without commenting up this aspect, in the facts and circumstances of the case and in view of settled legal position, this petition requires to be allowed.

6. I would like to quote some observations of this Court (Coram : N.N. Mathur, J) in the case of Valimad Pirbhai Sunesdara v/s State of Gujarat, in the decision dated 7.7.1998 in Spl.C.A. No. 744/1998 :-

" Thus, the consistent view of the apex Court is tht ordinarily a promotion should not be withheld merely because some disciplinary or criminal proceedings are pending against the employee. Possibility cannotbe ruled out that investigation of the preliminary enquiry may be kept pending deliberately to deprive a person of the promotion. There are also cases where even though prompt decision is taken, the government employee avoids service of the chargesheet till the date of the meeting of the Departmental Promotion Committee is convened. Thus, to struck balance, the only rational view can be taken is to cast duty on the Department not only to take a conscious decision to initiate the departmental proceedings but also frame the charges and to take effective and since steps to serve on the employee. .... In the instant case, the alleged incidents are of the year 1991. A show cause notice was served as late as in

> 1994. In spite of the fact that the notice was replied in 1994, it took two years to take a conscious decision to initiate departemntal enquiry only in November/ December 1998. During this period, when D.P.C. met in 1997, except conscious decision, neither the charges were framed, and as such obviously no steps for service were taken. This speaks volumes if not mala fide, lethargy on the part of respondent, for which a person cannot be dfenied of his right to consideration of promotion on the highest post."

7. Normally, the Court while exercising the jurisdiction under Article 226 of the Constitution, should not direct the department to promote a particular delinquent. However, this being a case where the name of the petitioner was in select list approved by the GPSC, coupled with the fact that sealed cover procedure was applied wrongly and undisputedly the juniors to the petitioner are promoted from the very select list, this is fit case where mandatory orders are required tobe passed against the respondents granting reliefs as prayed for by the petitioners, irrespective of pendency of the departmental proceedings now pending.

8. In the result, petition is allowed. Respondents are hereby directed to promote the petitioner Prahlad Mukundray Bhatt on the post of Deputy Executive Engineer (Civil) with effect from 20.4.2001 i.e. the day on which juniors to the petitioner are promoted, with all consequential benefits. Respondents are directed to promote the petitoner within three weeks from the date of receipt of writ of this order and shall pay all the consequential benefits including arrears amount within a one month thereafter. Rule is made absolute accordingly. No costs.

Direct Service is permitted.

27.9.2001 [C.K. BUCH, J]
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